

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 01-0037 CG
Denial of Indiana Charity Gaming Application**

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ISSUE

I. Charity Gaming – Operator Membership Requirement

Authority: IC 4-32--9-28

The Petitioner, Love All Ministries, Inc., protests the Department's denial of its Indiana Charity Gaming Application.

II. Charity Gaming – Management and Conduct of Events

Authority: IC 4-32-9-15

The Petitioner protests the Department's denial of its Indiana Charity Gaming Application.

III. Charity Gaming – Grounds for Penalties

Authority: IC 4-32-12-2

The Petitioner protests the imposition of civil penalties.

IV. Charity Gaming – Additional Penalties

Authority: IC 4-32-12-3

The Petitioner protests the three (3) year prohibition on associating with charity gaming in Indiana.

STATEMENT OF FACTS

The Petitioner's organization was formed in December of 1993, and was incorporated in October of 1995. Petitioner received its federal exemption on February 21, 1996. The Petitioner obtained a certificate of assumed name from the Indiana Secretary of State's Office on December 8, 1997. The Petitioner was then certified by the Indiana Secretary of State to use the name Models for Christ, Inc. On or about November 6, 2000 the Petitioner applied for an Indiana charity gaming license. The Petitioner's application was completed by its attorney and signed by the Pastor on September 1, 2000. The Department instituted an investigation, and as a result of that investigation denied Petitioner's application, imposed civil penalties, and prohibited several individuals from associating with Indiana charity gaming for a period of three (3) years on January 18, 2001. The Petitioner filed a formal protest on January 23, 2001. An administrative hearing in the above referenced matter was held on January 25, 2001. The hearing was conducted pursuant to IC 6-8.1-5-1 et seq. See, Portland Summer Festival v. Department of Revenue, 624 N.E. 2d 45 (Ind. App. 5 Dist. 1993).

I. Charity Gaming – Operator Membership Requirement

DISCUSSION

The Department's investigation revealed that the proposed operators, "are not now nor have ever been members" of the Petitioner's organization. IC 4-32-9-28 states, "An operator must be a member in good standing of the qualified organization that is conducting the allowable event for at least one (1) year at the time of the allowable event." The Annual Bingo License Application (CG-2) contains the following language directly above the signature of the Pastor, "We certify under penalty of perjury that the organization applying is a qualified organization, and there are no misrepresentations or falsifications in the information stated. We understand false or misleading statements will cause rejection of this application or revocation of future license(s)..." During the Department's investigation, and again at hearing, the Petitioner's Pastor reiterated that he did not know the operators whose names appeared on the form CG-2, and in fact stated under oath, "...They are not actual members of Love All People Ministry....". (Record at 54). Petitioner's counsel called as a witness the organization's attorney who had filled out the form CG-2. Petitioner's attorney, who was under oath stated, "...something that would have obviously made this a lot more unconfusing [sic] is if we would have just proceeded with this application process under Models for Christ, but unfortunately Models for Christ is a subsidiary of – well, our position is that it's a subsidiary auxiliary or affiliated group, therefore, we could not have – there's no way that they would have met

the criteria as far as documentation that is required by the Department of Revenue situation... “. (Record at 103).

It is clear from the testimony at hearing that the Petitioner’s attorney was the one who filled out the CG-2, even though the application was signed by the Pastor. The Petitioner’s Pastor assumed that the application was in order since it was completed by their attorney. The Petitioner’s reliance upon its counsel’s expertise contributed to this controversy. As it turns out, the Petitioner’s attorney’s knew all three operators. One of the proposed operators was his secretary. He stated that he had a personal relationship with another proposed operator and he knew the third for about five years. (Record at 89). The operators were alleged to have been members of the organization Models for Christ, Inc. which was the assumed business name of the Petitioner. An organization operating under an assumed business name is legally the same entity. However, it is clear from the testimony given at the hearing that the members of Petitioner’s organization and Model’s for Christ were different. (See Department’s Exhibits D & E). Acting under an assumed business name the two organizations should be the same entity. In this case, the list of members were different, the criteria to become a member was separate and distinct and the members of Model’s for Christ did not even have to be a member of the Petitioner’s organization. (Record at 54, 70, 71, 77, 78, 91 92, 102, 103). It is clear that the two entities were treated by the Petitioner as two distinct entities.

FINDING

The Petitioner’s protest is denied.

II. Charity Gaming – Management and Conduct of Events

DISCUSSION

The Department’s investigation alleges that the proposed operators were recruited to specifically work for the Petitioner as part of a contract to operate the gaming events. IC 4-32-9-15 provides that a qualified organization may not contract or otherwise enter into an agreement with an individual, a corporation, a partnership, a limited liability company, or other association to conduct an allowable event for the benefit of the organization. A qualified organization shall use only operators and workers meeting the requirements of this chapter to manage and conduct an allowable event.

Pursuant to IC 6-8.1-5-1, the Department’s findings constitute prima facie evidence that the Department’s findings are valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).

Prima facie evidence is evidence, which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue, which it supports, but which may be contradicted by other evidence. Of course, the Department's assertions must be made based on a reasonable belief, based upon the best information available to the Department. Here, the Department's assertion that the Petitioner contracted with the operators to conduct charity gaming is based upon the fact that the operators' names appear as operators for several other entities, and that Petitioner's attorney was the owner of the property where the charity gaming was to be conducted. (Record at 90). This evidence does not constitute prima facie evidence.

FINDING

The Petitioner's protest is sustained.

III. Charity Gaming – Grounds for Penalties

DISCUSSION

Pursuant to IC 4-32-12-2, "The department may impose upon a qualified organization or an individual the following civil penalties: (1) Not more than one thousand dollars (\$1,000) for the first violation...". The Petitioner's protest of Issue I was denied. The violation of IC 4-32-9-28 by the Petitioner constitutes a violation subjecting the Petitioner to a civil penalty; therefore, the imposition of the civil penalty is well within the Department's authority pursuant to IC 4-32-12-2.

FINDING

The Petitioner's protest is denied.

IV. Charity Gaming – Additional Penalties

DISCUSSION

Additionally, the Department prohibited the Petitioner's Pastor and the three (3) proposed operators from associating with charity gaming for a period of three (3) years. IC 4-32-12-3(3) provides, "In addition to the penalties described in section 2 of this chapter, the department may do all or any of the following: ...(3) Prohibit an operator or an individual who has been found to be in violation of this article from associating with charity gaming conducted by a qualified organization..."

Pursuant to IC 6-8.1-5-1, the Department's findings are prima facie evidence that the Department's claim is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993). In this case, the three (3) operators did not show nor did the Petitioner provide any evidence supporting its proposition that the operator's were not in violation of Title 4 Article 32.

FINDING

The Petitioner's protest is sustained as to its Pastor; However, the three (3) operators are hereby prohibited from associating with charity gaming for a period of three (3) years from the date of this opinion.

CONCLUSION

Upon payment of the civil penalty, the Petitioner may reapply for an Indiana charity gaming license provided the proposed operators and workers comport to the provisions of IC 4-32-9-28, & 29.